



**FINDINGS AND RECOMMENDATIONS IN THE MATTER OF
OCEANA GROUP LIMITED // FRISBEE TRADE AND INVESTMENT 1309 T/A SCD SYSTEM
CC & ANOTHER**

CASE NUMBER: 33/7/2016

Summary: *Allegations - B-BBEE Commission investigation pursuant to a complaint by Oceana Group Limited against Frisbee Trade and Investment 1309 CC t/a SCD Systems CC and Ms. Charmaine Rene Coetzee alleging that the entity submitted a fraudulent B-BBEE certificate for purposes of obtaining a contract - Frisbee Trade and Investment 1309 CC t/a SCD Systems CC is owned by Ms. Charmaine Rene Coetzee, a white South African woman, while B-BBEE certificate states that it is 100% black owned - Findings – the B-BBEE certificate was invalid – entity is not 100% black owned – misrepresentation of B-BBEE status – Recommendations – refund to complainant for the contract payment made, public apology, training and undertaking not to commit violations in the future, failing which other actions may be pursued under the B-BBEE Act.*

1. Introduction

- 1.1 The Broad-Based Black Economic Empowerment Commission (“B-BBEE Commission”) is established in terms of section 13B of the Broad-Based Black Economic Empowerment Act No. 53 of 2003 as amended by Broad-Based Black Economic Empowerment Act No. 46 of 2013 (“the B-BBEE Act”).
- 1.2 The B-BBEE Commission is empowered to conduct investigations on any matter arising from the application of the B-BBEE Act, including any B-BBEE initiative or a category of B-BBEE initiatives, in terms of section 13F (1) (d) and section 13J (1) of B-BBEE Act, read with regulation 15 of the Regulations Regulating the Administration and Implementation of the B-BBEE Act and the Functions of the B-BBEE Commission, 2016 (“B-BBEE Regulations”).

- 1.3 Without limiting the powers of the B-BBEE Commission, in terms of section 13J (3) of the B-BBEE Act, read with regulation 15 (4) (g) of the B-BBEE Regulations, the B-BBEE Commission may make a finding on whether any B-BBEE initiative involves a fronting practice.
- 1.4 In terms of regulation 15 (13) of the B-BBEE Regulations, before making its final findings, the B-BBEE Commission must notify the respondent in writing of the details of the adverse finding(s) and afford them an opportunity to respond to each or any finding within 30 (thirty) days, which on merit can be extended by a maximum period of 10 (ten) days.
- 1.5 In terms section 13J (7) (a) of the B-BBEE Act read with regulation 15 (12) (a)-(c) of the B-BBEE Regulations, the finding(s) or recommendation(s) made by the B-BBEE Commission must be in writing, communicated to the complainant and published in a manner it may deem fit or appropriate, subject to section 13J (7) (b) of the B-BBEE Act.
- 1.6 This publication is therefore issued in line with these provisions of the B-BBEE Act and in the interest of the public.

2. *Brief description of the complaint*

- 2.1 The Minister of Trade and Industry issued the B-BBEE Regulations on 06 June 2016 which prescribe the process for complaints in terms of the B-BBEE Act. Regulation 15 specifically outlines the process from submission to resolution of a complaint, and further provides for both instances where the B-BBEE Commission responds to a complaint and where it investigates a complaint on its own initiative.
- 2.2 The B-BBEE Commission conducted an investigation pursuant to a complaint lodged by Oceana Group Limited, a public company registered in terms of the Company Laws of South Africa (the Complainant) filed a complaint against Frisbee Trade and Investment 1309 T/A SCD Systems CC, a close corporation incorporated in terms of the Close Corporation laws of South Africa (the First Respondent), alleging practices which are contrary to objectives of the B-BBEE Act.

- 2.3 The allegations are summarised for the purpose of this publication as follows:
- 2.3.1 that on or about June 2015 Frisbee Trade and Investment 1309 t/a SCD Systems CC was successfully awarded a contract following a tender process. The contract was awarded to Frisbee Trade and Investment 1309 t/a SCD Systems CC for the supply and installation of generators and related equipment to subsidiaries of Oceana Group Limited, namely Lucky Star Limited (Lucky Stars), Lamberts Bay Food Limited (LBF) and Commercial Cold Storage (CCS);
 - 2.3.2 that one of the main considerations for awarding the contract to Frisbee Trade and Investment 1309 t/a SCD Systems CC, was the fact that Frisbee Trade and Investment t/a 1309 SCD Systems CC represented on its bid documents that it is a 100 % black female owned enterprise;
 - 2.3.3 that Oceana Group Limited suspected that Frisbee Trade and Investment 1309 t/a SCD Systems CC had supplied Oceana Group Limited with fraudulent B-BBEE certificates;
 - 2.3.4 that CIPC records reflect that from 2012 to date, the sole member of Frisbee Trade and Investment 1309 t/a SCD Systems CC is one Charmaine Rene Coetzee, who appears to be a white female;
 - 2.3.5 that the verification agency who apparently conducted Frisbee Trade and Investment 1309 t/a SCD Systems CC's verification, namely Harvest Chartered Accountants Incorporated, advised Oceana Group Limited that the B-BBEE certificates were not issued by them and that the certificates appear to be fraudulent; and
 - 2.3.6 that in terms of the B-BBEE certificates submitted by Frisbee Trade and Investment 1309 t/a SCD Systems CC, the following anomalies can be noted;
 - 2.3.6.1 that the scorecard applied is the "Qualified Small Enterprise scoreboard" Instead of Qualifying Small Enterprise scorecard ("QSE"), however the scores were given for all seven elements using the 2007

Codes of Good Practice instead of only five, as per new Codes of Good Practice;

2.3.6.2 that the certificate number is given as, **EME-12684** yet the QSE scorecard was used;

2.3.6.3 that the certificates have both SANAS and IRBA logos, which is incorrect as only one should be reflected on the face of the certificates as the accreditation body of the B-BBEE verification professional; and

2.3.6.4 that the certificate was issued on the 13th of April 2015 and therefore the expiry date should be the 12th of April 2016 instead of the 13th of April 2016 as stated on the certificate.

2.4 According to the B-BBEE Act, “**black people**” is a generic term which means Africans, Coloureds and Indians (a) who are citizens of the Republic of South Africa by birth or descent; or (b) who became citizens of the Republic of South Africa by naturalisation (i) before 27 April 1994; or (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date.

2.5 According to the allegations, Frisbee Trade and Investment 1309 T/A SCD Systems CC is owned by one Charmaine Rene Coetzee, a white South African female, who does not qualify to benefit under the B-BBEE Act.

2.6 The B-BBEE Commission investigated the allegations that fall within its mandate in terms of the B-BBEE Act and afforded the respondents an opportunity to respond to the allegations during the investigation in line with regulation 15 (17) of the B-BBEE Regulations, as well as the adverse findings in accordance with the requirements of regulation 15 of the B-BBEE Regulations.

3. Findings of the B-BBEE Commission

3.1 Having investigated the allegations in terms of the mandate under section 13F (1) (d) and section 13J (1), the Respondents failed to respond to the findings even after additional time

was provided after the expiry of the statutory thirty (30) days period, and the B-BBEE Commission in terms of section 13J (3) read with regulation 15 (4) (g) has made the following findings:

- 3.1.1 the B-BBEE certificates submitted by Frisbee Trade and Investment 1309 CC t/a SCD Systems CC and Ms. Charmaine Rene Coetzee to the Complainant were issued fraudulently and are invalid;
- 3.1.2 Ms. Charmaine Rene Coetzee completed and signed the Supplier Forms provided by the Complainant and affirmed that her entity, Frisbee Trade and Investment 1309 t/a SCD Systems CC, had a B-BBEE certificate from an accredited verification agency and that the entity is 100% black and female black owned, when this is not the case;
- 3.1.3 Ms. Charmaine Rene Coetzee presented B-BBEE certificates that purported to be valid B-BBEE certificates certifying her entity as 100% black and black female owned while she knows that she is a Caucasian woman, thereby misrepresenting the B-BBEE status of the entity to the Complainant;
- 3.1.4 Ms. Charmaine Rene Coetzee knew or ought to have known that the B-BBEE certificates are fraudulent and invalid as the B-BBEE certificates state prominently that her entity is 100% black owned, and that her being a Caucasian adult female and the only member of Frisbee Trade and Investment 1309 t/a SCD Systems CC, did not meet the definition of 'black person' in terms of the B-BBEE Act;
- 3.1.5 The Frisbee Trade and Investment 1309 CC t/a SCD Systems CC and Ms. Charmaine Rene Coetzee engaged in an act of misrepresentation of B-BBEE status, which is contrary to the B-BBEE Act and may also amount to an offence in terms of section 13O (1) (a) of the B-BBEE Act; and
- 3.1.6 The conduct of Ms. Charmaine Rene Coetzee may be in violation of her duties and obligations under the Close Corporations Act, and that she may not be fit to hold membership in an entity, and further that the affairs of Frisbee Trade and

Investment 1309 CC t/a SCD Systems CC may require an investigation by Companies and Intellectual Property Commission (CIPC).

- 3.2 The B-BBEE Commission afforded the respondents an opportunity to respond to the adverse findings upon investigation in line with regulation 15 (13) of the B-BBEE Regulations, but the respondents failed to provide its response. In the initial response after receiving the findings, the respondents indicated that they were still seeking legal advice on the matter. The B-BBEE Commission made several attempts in writing and telephonically, and no response was forthcoming from the respondents.
- 3.3 As a last resort, a site visit was also conducted at the known premises of the respondents and the respondents were nowhere to be found, and thereafter the B-BBEE Commission proceeded to make its final findings in accordance with regulation 15 (14) of the B-BBEE Regulations, confirming the preliminary findings as final findings reflected above.

4. Recommendations of the B-BBEE Commission

- 4.1 Based on the above-mentioned findings, the B-BBEE Commission made the following recommendations as corrective measures in resolving this matter, taking into account redress to the Complainant, the need to address the violation of the B-BBEE Act in a manner that advances transformation in the interest of the public, and measures to prevent similar transgressions from occurring in future:
- 4.1.1 For the undue benefit that resulted from false and/or misrepresented B-BBEE status, that Frisbee Trade and Investment 1309 CC t/a SCD Systems CC and Ms. Charmaine Rene Coetzee refund the Complainant the amount paid under the contract, if any, within **30 (thirty) days** of the findings by the B-BBEE Commission;
- 4.1.2 For the effect of the conduct on the Complainant, noting that the B-BBEE status of suppliers gets calculated in the assessment of the B-BBEE status of Complainant, that Frisbee Trade and Investment 1309 CC t/a SCD Systems CC and Ms. Charmaine Rene Coetzee must issue a public written apology to the Complainant within **five (5) days** of the findings of the B-BBEE Commission;

- 4.1.3 In order to prevent similar conduct by the respondents in future, that Ms. Charmaine Rene Coetzee must attend a one-day training session on the B-BBEE Act to be provided by the B-BBEE Commission or any institution accredited to offer such training in terms of the South African law within **thirty (30) days** of the findings of the B-BBEE Commission;
- 4.1.4 Ms. Charmaine Rene Coetzee must make a written undertaking under oath that none of the entities owned by her or where she is the majority shareholder or interest holder have engaged or engage in similar conduct, and such undertaking must be submitted to the B-BBEE Commission within **thirty (30) days** of the findings of the B-BBEE Commission; and
- 4.1.5 That Ms. Charmaine Rene Coetzee must attend a corporate governance training session with CIPC or any institution accredited to offer such training in terms of the South African law within **ninety (90) days** of the findings of the B-BBEE Commission.
- 4.2 Should Frisbee Trade and Investment 1309 CC t/a SCD Systems CC and Ms. Charmaine Rene Coetzee not be agreeable to the recommendations above that in the view of the B-BBEE Commission would remedy the adverse findings above, the B-BBEE Commission may proceed with the following actions in accordance with the B-BBEE Act:
- 4.2.1 That the B-BBEE Commission refer this matter to the National Prosecuting Authority for prosecution, consistent with the provisions of section 13J (5) of the B-BBEE Act:
- 4.2.2 That the conduct of Frisbee Trade and Investment 1309 CC t/a SCD Systems CC and Ms. Charmaine Rene Coetzee to CIPC for consideration and appropriate remedial intervention, including an order to bar Ms. Charmaine Rene Coetzee from holding position of membership or directorship in any entity, as well as investigating the affairs of the Frisbee Trade and Investment 1309 CC t/a SCD Systems CC; and

- 4.2.3 That the B-BBEE Commission consider instituting proceedings in a court to restrain any breach of the B-BBEE Act, including any fronting practice, or to obtain appropriate remedial relief, in terms of section 13J (4) of the B-BBEE Act.
- 4.3 Frisbee Trade and Investment 1309 CC t/a SCD Systems CC and Ms. Charmaine Rene Coetzee failed to implement the remedial recommendations and as indicated above, the B-BBEE Commission tried to trace her in vain, even after the site visit where the B-BBEE Commission found the offices vacated.
- 4.4 Given the conduct of Frisbee Trade and Investment 1309 CC t/a SCD Systems CC and Ms. Charmaine Rene Coetzee, it is imperative that the B-BBEE Commission pursue section 13J (4) proceedings to seek a remedy, including declaring Ms Charmaine Rene Coetzee delinquent, as well as a referral to the Companies and Intellectual Property Commission to consider investigating the affairs of Frisbee Trade and Investment 1309 CC t/a SCD Systems CC and the conduct of Ms. Charmaine Rene Coetzee and impose appropriate remedies.
- 4.5 In terms of section 13A of the B-BBEE Act, any contract or authorisation awarded on account of false information knowingly furnished by or on behalf of an enterprise in respect of its B-BBEE status, may be cancelled by the organ of state or public entity without prejudice to any other remedies that the organ of state or public entity may have.

5. *Status of this publication*

- 5.1 The final findings, with recommendations, were issued by the B-BBEE Commission on 4 June 2017. This publication is prepared only for the purpose of publishing the findings and recommendations of the B-BBEE Commission on this matter in the interest of the public, but does not constitute an investigation report.

6. Conclusion

- 6.1 The B-BBEE Commission has taken all due care in preparing this publication, and should there be any errors you wish to highlight or should you require any clarity regarding the contents of this publication, please do not hesitate to contact us immediately.
- 6.2 This publication will also be available on the website of the B-BBEE Commission from the date of its release and it will be circulated to the public through channels that the B-BBEE Commission deems fit.
- 6.3 For any queries or further clarity on this publication, kindly feel free to contact us at the following contact details:

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